

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

DAVID PARDO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 1:12cv1450
	)	
FEDERAL AVIATION	)	
ADMINISTRATION,	)	
	)	
Defendant.	)	
_____	)	

**ANSWER TO FIRST AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 8, the Federal Aviation Administration (“FAA”), through its undersigned counsel, respectfully submits the instant answer to plaintiff’s first amended complaint in the above-captioned action.

**FIRST DEFENSE**

Defendant reserves the right to raise any affirmative defense – including, but not limited to, those expressly found in Federal Rule of Civil Procedure 8© – that may be supported by the record in the instant action.

**SECOND DEFENSE**

Defendant answers the allegations contained within the petition for review’s numbered paragraphs as follows:

**Preliminary Statements**

1. The allegations contained within this paragraph constitute a characterization of plaintiff’s complaint and conclusions of law to which no response is required.

2. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

3. Defendant admits that Plaintiff was employed by the FAA as an attorney until the FAA terminated him. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

4. Defendant admits that Plaintiff submitted a FOIA request to the FAA dated July 27, 2012. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

5. Defendant denies the allegations contained within this paragraph.

6. The allegations contained within the first sentence of this paragraph constitute conclusions of law to which no response is required. Defendant denies the allegations contained in the second sentence of this paragraph.

7. The allegations contained within this paragraph constitute conclusions of law and characterizations of the complaint to which no response is required.

### **Jurisdiction and Venue**

8. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

9. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

10. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

11. The allegations contained within this paragraph constitute conclusions of law to

which no response is required.

### **Parties**

12. The allegation that Plaintiff is a natural person is a conclusion of law to which no response is required. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

13. Defendant is without sufficient information to admit or deny the allegations contained within this paragraph.

14. The allegations contained within the first and second sentences of this paragraph constitute conclusions of law to which no response is required. Defendant denies that it is “denying Plaintiff access to its records.” The remainder of the allegations contained in the third sentence of this paragraph constitute conclusions of law to which no response is required.

### **Facts**

15. Defendant admits the allegations contained in this paragraph.

16. Defendant admits the allegations contained in this paragraph.

17. Defendant admits that a letter dated August 17, 2012, was sent to Plaintiff by the FAA and that the letter was signed for Leslie H. Smith, Manager, Air Transportation Division, and provided a fee estimate of 2 hours of free search and 4 hours of additional searching at \$50 per hour, for a total of \$200. Defendant admits that Plaintiff agreed to pay the estimated fees. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

18. Defendant admits that it sent Plaintiff a letter dated August 27, 2012, and that the

letter was signed by Rebecca MacPherson, Assistant Chief Counsel for International Law, Legislation, and Regulations, and provided documents responsive to Plaintiff's FOIA request. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

19. Defendant admits the allegations contained in this paragraph.

20. Defendant admits that the documents produced with Ms. MacPherson's letter included emails sent to or from individuals assigned to AFS, including employees named in Plaintiff's request. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

21. Defendant admits that it sent a letter dated August 31, 2012, that was signed by Leslie H. Smith, Manager, Air Transportation Division, and that the letter noted that the hours of searching in the previous fee agreement had been exhausted and provided a fee estimate of 1 additional hour of search at \$50 per hour, for a total of \$50. Defendant admits that Plaintiff agreed to pay the estimated fee amount. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

22. Defendant admits that it sent Plaintiff a letter dated October 10, 2012, that was signed for John M. Allen, Director, Flight Standard Service, and that provided an initial determination on Plaintiff's request and produced one document. Defendant admits that the one document produced with the letter is also available at the website referenced in footnote one in Plaintiff's First Amended Complaint. Defendant admits that the language quoted in Plaintiff's First Amended Complaint, without the bolded emphasis, is included in the October 10 letter. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

23. Plaintiff's allegation that his appeal was filed pursuant to 49 C.F.R. § 7.21© is a conclusion of law to which no response is required. Defendant admits the remaining allegations contained in this paragraph.

24. Defendant is without sufficient information to admit or deny the allegations contained within this paragraph.

25. Defendant admits the allegations contained in this paragraph.

26. Defendant admits the allegations contained in this paragraph.

27. Defendant denies the allegations contained in the first sentence of this paragraph. Defendant denies that it had not contacted Plaintiff to address Request No. 2012-6972. Defendant admits that it had not contacted Plaintiff regarding his requests for status updates. Defendant denies the allegations contained in the third sentence of this paragraph.

28. The allegations contained in the first sentence of this paragraph constitute conclusions of law to which no response is required. Defendant is without sufficient information to admit or deny the allegations contained in the second sentence of this paragraph.

29. Defendant admits the allegations contained within this paragraph.

30. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

31. Defendant admits the allegations contained within this paragraph. Defendant admits that Exhibit A of Plaintiff's First Amended Complaint is Plaintiff's original complaint.

32. Defendant admits that it has produced documents responsive to Plaintiff's request during the pendency of the litigation. Defendant denies that it has not produced all documents responsive to Plaintiff's request. Defendant admits that it produced an email from Jodi Baker dated June 30, 2010, and that the document contained no information in the "to," "cc," and "bcc"

fields. Defendant admits that Exhibit B of Plaintiff's First Amended Complaint is a copy of an email from Jodi Baker produced by Defendant to Plaintiff.

33. Defendant is without sufficient information to admit or deny the allegations contained within this paragraph.

34. Defendant admits the allegations contained in this paragraph.

35. Defendant admits the allegations contained in this paragraph.

36. Defendant is without sufficient information to admit or deny the allegations contained in this paragraph.

37. Defendant denies that it affirmatively redacted or altered the June 30, 2010, email. Defendant admits that Ms. Baker's email account contains a version of the document with the recipient information intact, and avers that it has produced to Mr. Pardo a copy of the document with all recipient information intact. Defendant is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

38. The allegations contained in this paragraph constitute characterizations of Plaintiff's complaint and conclusions of law to which no response is required.

39. The allegations contained in this paragraph constitute a characterization of Plaintiff's complaint to which no response is required.

### **Causes of Action**

40. Defendant incorporates its responses to the allegations contained within paragraphs 1-39.

41. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

Any allegation not specifically admitted or denied is expressly denied.

WHEREFORE, defendant, having fully answered the allegations of the complaint, requests that this Court dismiss plaintiff's complaint or enter judgment in its favor.

Respectfully submitted,

NEIL H. MacBRIDE  
UNITED STATES ATTORNEY

By:                     /s/                      
KIMERE J. KIMBALL  
Special Assistant U.S. Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Telephone: (703) 299-3770  
Fax: (703) 299-3983  
Email: [kimere.kimball@usdoj.gov](mailto:kimere.kimball@usdoj.gov)

ATTORNEYS FOR DEFENDANT

DATE: February 28, 2013

OF COUNSEL: Stephen Dunn  
Federal Aviation Administration

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

David Pardo  
4854 Eisenhower Avenue  
Unit 447  
Alexandria, VA  
dpardo@mspbwatch.net

Date: February 28, 2012

\_\_\_\_\_/s/  
KIMERE J. KIMBALL  
Special Assistant U.S. Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Telephone: (703) 299-3770  
Fax: (703) 299-3983  
Email: [kimere.kimball@usdoj.gov](mailto:kimere.kimball@usdoj.gov)

ATTORNEYS FOR DEFENDANT